



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-163582

September 10, 1971

*GAO Referral Not
Required*

Dear Mr. Chairman:

On February 25, 1971, you wrote to our Office concerning executive branch denial of access to records. You pointed out that in recent years the Committee has been denied access to many documents and other materials and that such denials preclude effective legislative oversight of executive branch performance.

The basis for the executive branch denial of information to the Congress is the constitutional doctrine of separation of powers which is interpreted by the executive branch as granting it a privilege to withhold information where such action is deemed necessary in the best interest of the country.

You ask that our Office analyze the matter and furnish a compilation of summaries of all significant instances in recent years when we have been denied access to executive branch records or materials. You also ask that we submit our legislative recommendations to insure that the Congress cannot be denied access to executive branch documents unless the President exercises executive privilege.

As evidenced by the enclosed compilation and by recent testimony of officials of our Office, insofar as GAO is concerned, absolute denial by the executive branch of access to records has in recent years been quite rare. For example in testifying on your bill S. 1125, 92d Congress, before the Subcommittee on Separation of Powers of the Senate Judiciary Committee, copy enclosed, the Deputy Comptroller General on July 28, 1971, characterized our current problems on access as being those of frustrations and delays in carrying out our statutory responsibilities rather than those attending outright refusal of access on claims of executive privilege.

With regard to legislative recommendations, the Deputy Comptroller General stated in that testimony that the enactment of S. 1125 should result in a freer flow of information to the Congress and its committees except in those cases where the President himself has decided that disclosure shall be precluded on the ground of executive privilege. Specifically, he stated that, under the procedures contemplated by the bill, if the privilege is to be exercised by the President there should be no

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delays in the hearing processes and if the privilege is not to be claimed there is no basis remaining that we can see which would justify failure to testify. We therefore feel that the enactment of S. 1125 should go a long way to reduce the problems of access to records by the Congress and its committees, and, aside from endorsement of S. 1125 we have no recommendations to make concerning this aspect of the problem.

With regard to the delays that hinder effective performance of the duties of our Office, we feel that your Amendment No. 343 to S. 1125 of July 29, 1971, would help avoid these delays and we are unable to fashion legislative recommendations which we feel would be more salutary than the language of your amendment.

This amendment would impose a sanction along the lines of that now providing for a cut off of foreign assistance funds under section 634(c) of the Foreign Assistance Act of 1961, 22 U.S.C. 2394(c). Specifically, the amendment would provide that upon a determination by the General Accounting Office that any information requested of the executive branch by a committee or subcommittee of the Congress or the General Accounting Office has not been made available within sixty days after the request has been received and if during such period the President has not signed a statement invoking executive privilege, no funds made available to the agency involved shall be obligated or expended commencing on the seventieth day after such request is received by such agency unless and until such information is made available or the President invokes executive privilege with respect to such information. In addition to helping to alleviate the problems that we have had in delays in obtaining access to information your amendment would also assist the Congress and its committees in day-by-day operations which require information, independent of the hearing processes.

It is hoped that this letter and its enclosure will assist the Committee in its consideration of this very important problem. We would of course be pleased to further assist the Committee in any way that we can.

Sincerely yours,

R.F.KELLER

Acting Comptroller General
of the United States

Enclosure

The Honorable J. William Fulbright
Chairman, Committee on Foreign Relations
United States Senate